Brown, Brian (TM)

From: Morris, Craig
Sent: Thursday, January 06, 2011 3:37 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

From: (b)(6)
Sent: Thursday, January 06, 2011 3:33 PM
To: TMFeedback
Cc: 'Renee Nadeau'
Subject: Small Business Study

Hello USPTO,

I have number my answers according to the questions:

1. We have three trademarks, as a brewery

2. My "Vermonster" trademark was sent a cease and desist letter, with attempts of communication finding an alternative solution failing.

3. Cease and desist letter from Monster Energy. We are beer, they are energy drinks, Our TM is not in the dictionary, theirs is. Our TM application showed no conflicts in its review by the USPTO. The application moved to public posting, that's when the lawyer team of Monster Energy pick it up and sent cease and desist. I tried to talk with them, with no avail and was told by the lawyers they would proceed with the court case. Because " the client would possibly like to get into the beer category in the future"

4. We did not go to court as my lawyer told me we not be able to defend our rightful trademark against a corporation of this size, they had the money to wear us down over time and we would eventually lose in default because we would not be able to afford to defend our case when we ran out of money. This constitutes purchase of justice, and buying court time to influence the outcome of a case.

5. N/A

6. TM "bullies" are a problem because the monetary power they hold allows them to target other trademarks in market categories they want to enter. Just google various trademark issues and see the depth the problem, it's nation wide in every market.

7. I don't have experience of other aggressive tactics,

8. Originally trademarks were created as a consumer protection act to protect the consumers. They have completely changed into today's version where they now protect the owner of the TM. The USPTO in my case found no reason to reject my Vermonster application. The USPTO enforces the laws on the books, so why would a corporation be allowed to overturn the decision of the USPTO? Yes the USPTO needs to prevent this type of aggressive unwarranted litigation tactics. If the USPTO sees no issue with an application, then it should be very difficult for other TM owners pursue litigation. The USPTO is following the laws, and as we all know, any lawyer worth the paper on his or her wall can and will argue anything, about everything. Some of the tactics are just showing billable hours to their client, reassuring the client they are "looking out" for their best interest.
The USPTO needs to stand behind and back up their decision when they accept applications. Prevent the ability for a corporation to pursue actions.

9.- 12.

1. Updating the classification system, As technology has brought new products, the USPTO has had to fit these into a category, an example is online e- magazines are in with wireless apparatus and fire extinguishers. My own example is beer (class 32) is lumped in with soda, energy drinks, water, fruit drinks , syrups and other non -alcoholic beverages While class 33 is for alcoholic beverages.

2. The recent change adding the 1995 Anti- Dilution Act. This allows a famous trademark owner to get a court order stopping the use of a similar trademark for a different product category. In effect this practice this allows Trademark owners to reserve future markets that they are not engaged in by claiming the other products already in the different markets are diluting their Trademark.

3. In Federal court there is a rule # 11 that requires a lawyer to have good grounds for legal positions taken on a client's behalf. If a frivolous position is taken, the lawyer can be penalized. This rule should be adopted and enforced in Trademark law. The point when it is available to be enforced is after ten's of thousands of dollars have been spent, something that is hard to come by as a small business.

Many of us have spent too much time and money defending and dealing with irrational trademark issues, time and money that should have been used to grow our businesses.

Thank you for your time in this survey and considering changes to protect small business but not take away the rights of other trademark owners. One of the problems is the cost of litigation in terms of dollars and time. Small business does not have much of either, Yet larger business generally have a legal department to rely on, and usually more finances to pull from. I would love to fight and defend my rights, its in my nature as a small business, but when a billion dollar corporation does not want you to have a name for whatever reason, and the only outcome is that you will eventually run out of money and lose your name and everything that you have worked for and built. It's time for something to change.

Here's a cute thought that would cut a lot of problems out. What if litigation costs were based on a percentage compared to income. If it costs my company $90,000 to defend my rights and we have $1,000,000 in annual income that's 9%, then XYZ company that makes annually $1,000,000,000 then it will cost you $90,000,000 (9%) to pursue litigation !
I bet that would cure most of the "bullies" out there, as we know money fixes most everything.

Thank you,
Matt Nadeau
Rock Art Brewery
(b)(6)

Pellegrino, Rachel

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:25 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

From: Dan Brault (b)(6)
Sent: Monday, December 13, 2010 9:46 AM
To: TMFeedback
Subject: Small Business Study

Hello,

I am an agent with New York Life. I have not been target of any bullying but do know of at least one case locally. Rock Art Brewery was sued by Hanson energy drinks over the use of the word Vermonster, claiming that it was too much like Monster.

The trademark area seems to be an easy way for larger companies to try to squash small, upstart firms. Tort reform would seem like a good place to start. Small firms don't have the money to fight a long court battle against a large company. The large company should pay all legal fees for the small company if the small company wins the court battle. This would probably make it easier for the small company to get good counsel if the claim looks legitimate. I'm sure the lawyer would have his eyes on the wallet of the large company and may look forward to helping the small company.

I'm very much a capitalist but think too many lawyers and lawsuits are gumming up the works.

Thanks, dan

Daniel R. Brault, LUTCF
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New York Life Insurance Company, 51 Madison Ave., NY, NY 10010

Pellegrino, Rachel

From: Hickey, Toni
Sent: Tuesday, February 08, 2011 8:40 AM
To: Pellegrino, Rachel
Subject: FW: Hello Rock Art Brewery

Follow Up Flag: Follow up
Flag Status: Flagged

Please include in the results.

From: Colarulli, Dana
Sent: Thursday, October 07, 2010 6:41 PM
To: Barner, Sharon; Beresford, Lynne
Cc: Hickey, Toni; Cotton, Amy; Grundy, Judy
Subject: FW: Hello Rock Art Brewery

Sharon/Lynne –
I know you are preparing to go out to external folks with a request for information to build data for our study. Not sure who the staff lead is at this point.

I did want to forward the below, however, from a Leahy constituent to add to your collection of comments. Enjoy!

Dana Robert Colarulli
Director of the Office of Governmental Affairs
U.S. Patent and Trademark Office (USPTO)
Main Number: (571) 272-7300
(b)(6)

Email: dana.colarulli@uspto.gov

From: Cooper, Aaron (Judiciary-Dem) [mailto:Aaron_Cooper@Judiciary-dem.senate.gov]
Sent: Thursday, October 07, 2010 4:28 PM
To: Colarulli, Dana
Subject: FW: Hello Rock Art Brewery

Dana, I just wanted to forward along some thoughts from a constituent about the trademark study.

- The 1995 anti dilution addition to TM law: This really opens the door for well financed parties to use the court system to begin reserving future markets, or pursue TM infringement claims that are not a direct infringement. The ability to tie up another business in expensive legal proceedings about dilution allows a well financed party a victory by attrition rather than fact.
Our case maybe an example of this. Monster Energy vs. Rock Art Brewery In my conversations with Hansen's Naturals (parent corporation of Monster) legal council, they admitted that their client may want to get into the alcohol market. Obviously I was already there as a federally licensed and bonded brewery. My conversation with the CEO of Hansen's, Rodney Sacks, was based on the same desire to enter the alcohol market. His statement was that "they were already in the alcohol market because consumers were mixing their product with alcohol in establishments" Clearly they are not engaged in the commerce of selling alcoholic beverages as Rock Art is. Yes both sides would make terrific arguments as to each position, but at the end of the day the dilution factor is what brought this situation to a head.

Vermonster alcoholic beer is not Monster Energy drink both are sold in separate areas of the store, one has to be purchased with ID, the other is marketed to kids. Vermonster is not in the dictionary, Monster is. The "ace" I also held which I never disclosed was a simple concept, If Monster Energy currently markets to kids under the age of 21, and then wants to create an alcoholic drink based on the famous Monster brand and it's following, then by extension they are

marketing alcohol to minors which is illegal at the federal level. So they would not be able to use Monster as they have trademarked for alcohol, and all this wasted time and money on our end would be for nothing if we were able to fight it out with dollars in court, which of course we could not, so we would loose by default. Also there are over 20 alcoholic beverage labels on the books of the TTB, some for a fact predate Monster Energy's creation as a company, so again, the use of Monster in the alcoholic beverage category is under question.

So if the federal government did not see an issue with my VERMONSTER name and did not reject the application, rather moved if forward and posted it, then a lot of weight needs to be placed on that fact. The government writes and enforces the rules.

I think in this ever shrinking world, with mega mergers of wealthy corporations, if smaller, less financed companies are to be able to thrive, they need to either be protected from questionable claims of TM infringement, or we need a court system that allows a fair fight from both sides, a fight that does not depend on the amount of available dollars each has to spend.

-Rule # 11 should be adopted and enforced in TM law.

- Update the antiquated classification system, new dissimilar products are being lumped into existing categories. For example, online e-magazines are lumped with "wireless apparatus" and fire extinguishers, as well as another illogical grouping: beer and soda.

- The use of cease and desist letters, the letters state that you have broken the law and owe the company fee's, fines and other reimbursable expenses, it also stated dilution of their mark. These allegations are not based on a decision by a court of law, in this country we are supposed to be innocent until proven guilty. In our case they said we would owe them unless we went along with their wishes. In order for us to continue doing what we rightfully were doing in our day to day operations, we would be forced into an expensive legal battle. Again, why should I be forced into an expensive legal battle when the federal government said my name has no conflict? I could see if my name was rejected, and I continued to use it, then the other party would have grounds to take me to court, that's common sense.

Thanks Aaron, and give me a shout if you are in the Morrisville area, or have any questions. I know it is not an easy task to bring fairness back to trademark law, but obviously from the response you and I have received about Senator Leahy's bill/ law, it is one that needs to be tackled.

Matt Nadeau

(b)(6)